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Robert R. Corbin

August 10, 1989

The Honorable Charles R. Hastings
Yavapai County Attorney
Yavapai County Courthouse
Prescott, Arizona 86301

Re: I 89-071 (R89-084)

Dear Mr. Hastings:

Pursuant to A.R.S. § 15-253(B) we have reviewed your opinion letter to Mr. Jim Dodd, Superintendent of Humboldt Unified School District No. 22. We concur that A.R.S. § 15-952^{1/} provides for additional compensation for certified

1/ A.R.S. § 15-952 provides in pertinent part:

A. The governing board of a school district may calculate its revenue control limit and district support level for the budget year using the base level prescribed in § 15-901, subsection B, paragraph 2 increased by 1.25 per cent if granted approval by the state board of education according to the following procedure:

1. If the governing board did not receive approval to increase the school district's base level as provided in this section for the current year:

(a) The governing board shall submit evidence to the state board by May 1 that the school district has met the following requirements:

teachers whose salaries are funded from both federal and maintenance and operation funds, as well as certified teachers whose salaries are funded solely from maintenance and operation funds. We also concur that no distinction exists between the terms "certified" and "certificated."

Because we conclude that additional teacher compensation available to school districts pursuant to A.R.S. § 15-952 may be distributed to certificated teachers without regard to whether such teachers' salaries are funded in whole or in part by Federal funds, we revise your opinion as follows.

(Footnote 1 continued)

(i) The school district's teacher performance evaluation system meets the standards recommended by the state board as prescribed in § 15-537.

(ii) The persons evaluating teachers for retention decisions meet the minimum qualifications for evaluators recommended by the state board as prescribed in § 15-537.

. . . .

C. For any fiscal year in which a governing board receives approval to increase the school district's base level as provided in this section, the governing board may only expend the additional monies for additional teacher compensation.

D. In this section:

1. "Additional monies" means the amount of the increase in the base support level produced by increasing the base level as provided in subsection A of this section.

2. "Teacher compensation" means salaries and employee fringe benefits and other nonsalary benefits for certificated teachers.

(Emphasis added.)

A.R.S. § 15-952 allows a school district governing board (governing board) to increase its budget capacity^{2/} after following the prescribed procedures. A.R.S. § 15-952(C) requires these additional monies to be expended solely for additional teacher compensation. Section 15-952(D) defines "teacher compensation" as salaries and employee fringe benefits and other nonsalary benefits for certificated teachers. Section 15-952 neither defines "certificated teacher" nor limits its application to teachers' salaries paid solely from the maintenance and operation section of the budget. Certificated or certified teacher, however, is defined in at least two places in Title 15, the Education Code.^{3/}

First, A.R.S. § 15-501(2) defines the term "certificated teacher" for purposes of chapter 5, School Employees, unless the context otherwise requires, as follows:

"Certificated teacher" means a person who holds a certificate from the state board of education to work in the schools of this state and who is employed under contract in a school district in a position which requires certification except a psychologist or an administrator devoting less than fifty per cent of his time to classroom teaching.

^{2/}For school districts that qualify, § 15-592 allows the base level, the amount of per student state assistance funded by the legislature, to be increased by 1.25 per cent. The base level is the starting point in determining a school district's budget capacity.

^{3/}For purposes of the State Board of Education's supervision and control of teacher certification, A.R.S. § 15-203(A)(21) defines "teacher" as:

"Teacher", as used in this paragraph, means a person engaged in instructional work directly as a classroom, laboratory or other teacher or indirectly as a supervisory teacher, speech therapist, principal or superintendent in a school district or other educational institution below the community college, college or university level.

Second, A.R.S. § 15-901(B)(5) defines the term "certified teacher" for purposes of article 1, chapter 9, General Provisions For School District Budgets and article 4, chapter 7, Special Education For Exceptional Children, unless the context otherwise requires, as follows:

"Certified teacher" means a person who is certified as a teacher pursuant to the rules and regulations promulgated by the state board of education, who renders direct and personal services to school children in the form of instruction related to the school district's educational course of study and who is paid from the maintenance and operation section of the budget.

To be eligible for the § 15-952 additional teacher compensation monies, a governing board must submit evidence to the State Board of Education that it has established a qualified system for evaluation of the performance of certificated teachers in the school district as prescribed in § 15-537. See A.R.S. §§ 15-952(A)(1)(a)(i) and (ii) and 15-537(A).

A.R.S. § 15-537 does not differentiate among certificated teachers by source of funds. The system for evaluation of the performance of certificated teachers applies to all certificated teachers. By its terms, the definition of "certificated teacher" in § 15-501(2) applies to § 15-537 unless the context otherwise requires. Nothing in the context of § 15-537 requires a more limited definition of "certificated teacher."

Generally, if the same language is used in different portions of the same statutory enactment, it is presumed that such identical language is intended to have the same meaning. State v. Superior Court, 4 Ariz. App. 373, 378, 420 P.2d 945, 950 (1966), order vacated, 102 Ariz. 388, 430 P.2d 408 (1967). In 1986, the legislature adopted A.R.S. § 15-952 as part of Senate Bill 1292. See Laws 1986 (2nd Reg. Sess.) Ch. 399 § 19. Also in Senate Bill 1292, the legislature amended the definition of "certificated teacher" in section 15-501(2) and amended other provisions of A.R.S. title 15, chapter 5, including section 15-537, to be consistent with the amended definition. Id. at §§ 4-14, 16-18. Therefore, the legislature intended the same

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definition of "certificated teacher" in § 15-501(2) to apply to certificated teacher as used in § 15-952.^{4/}

The definition of "certified teacher" found in § 15-901(B)(5) is to be used in article 1, chapter 9 and article 4, chapter 7 of title 15. Section 15-952, however, is located in article 3, chapter 9 of that title. If the legislature had intended the definition of section 15-901(B)(5) to apply more extensively, it would have inserted the definition of "certified teacher" in subsection A of § 15-901 because the definitions in that subsection apply to all of title 15 unless the context otherwise requires.

Therefore, we conclude that the definition of "certificated teacher" found in section 15-501(2) rather than the definition of "certified teacher" found in section 15-901(B)(5) applies to section 15-952. As a result, all certified teachers, regardless of source of salary funds, are eligible to receive the additional compensation pursuant to section 15-952. Nothing in statute or case law prohibits a governing board from distributing the additional compensation from the maintenance and operation section of the budget to certified teachers whose salaries are funded in part by federal funds.

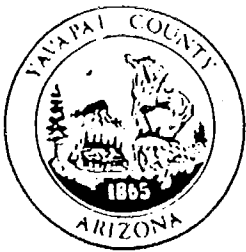
Sincerely,



BOB CORBIN
Attorney General

BC:LSP:bl

^{4/}We are aware that we have previously concluded that there is no definition of the term "certificated teacher." Ariz. Att'y Gen.Op. I88-039. This opinion shall overrule any such previous statements.



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March 13, 1969

Mr. Jim Dodd
Humboldt Unified School No. 22
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Dewey, Arizona 86327

Dear Mr. Dodd,

You have asked our opinion as to whether certified teachers whose salaries are funded from both federal and school district funds may receive additional monies for compensation pursuant to A.R.S. section 15-952. We conclude that a certified teacher paid under such a coexistent funding arrangement may receive additional salary pursuant to A.R.S. section 15-952. The additional salary, however, is limited to an amount proportionate to the percentage of total salary paid by the school district maintenance and operation budget. To further clarify by example: If a teacher's salary was funded equally from federal and school district sources, that teacher would be entitled to additional A.R.S. section 15-952 compensation in an amount equal to 50% of the sum payable in a similar position funded entirely from the school district operation and maintenance budget.

A.R.S. section 15-952 allows the governing bodies of a school district to expend certain additional monies for "additional teacher compensation." A.R.S. section 15-952(C). Teacher compensation is defined as salaries and related benefits for "certificated teachers." A.R.S. section 15-952(D)(2). Although the term "certificated" is not defined, we believe no distinction exists between the term "certified" and "certificated". See Attorney General Opinion 188-039 (R88-001). The term "certified" is defined pursuant to A.R.S. section 15-901(B)(5) as:

(A) person who is certified as a teacher pursuant to the rules and regulation promulgated by the state board of education, who renders direct and personal services to school children in the form of instruction related to the school district's educational course of study and who is paid from the maintenance and operation section of the budget.
(Emphasis added.)

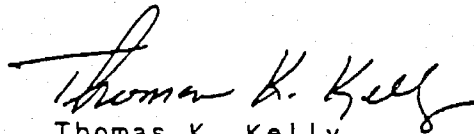
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Thus, the statute is clear in its mandate that in addition to requirements relating to licensing and instruction, to be classified as "certified" a teacher's salary must be funded by the school's operation and maintenance budget. Therefore, in a joint finding situation, it is the opinion of this office that additional section 15-956 monies can only be appropriated in proportion to that percentage of the teacher's salary paid by the school district's maintenance and operation budget. Any additional amount would be prohibited by statutory limitations set forth by the juxtaposition of A.R.S. section 15-962(D)(2) and A.R.S. section 15-901(B)(5).

A copy of this opinion has been provided to the Arizona State Attorney General's Office.

Yours very truly,


Thomas K. Kelly
Deputy County Attorney

TKK/djp